before the Court of a Magistrate of the 1st class which may impose any penalty provided by the Enactment, anything in any other Enactment to the contrary notwithstanding. The Court described in that section was superseded by the District Court set up by Ordinance No. 3 of 1946, section 18 and schedule 4 with similar powers to the old Court of 1st class Magistrate.

The wording of section 55 of the Excise Enactment is however permissive and not obligatory, and the section was enacted in my view for the purpose of enabling the 1st class Magistrate's Court to impose sentences which, owing to its power of punishment being limited, it could not otherwise impose.

The Court of a 1st class Magistrate was superseded by virtue of section 18 and schedule 4 of Ordinance 3 of 1946 (Courts) by the District Court, and by sections 20 and 21 its jurisdictional range and powers of punishment were increased, but the latter still are below that required by some of the penal sections of the Excise Enactment.

Section 55 of the Excise Enactment appears to give a District Court for the purposes of the Enactment alone the same jurisdictional range and powers of punishment as the Supreme Court, though it may be argued that while increasing its power of punishment to any penalty laid down by the Enactment it does not increase its jurisdictional range. The question of increased jurisdictional range does not however arise in the case under consideration in view of the fact that all offences created by the Enactment fall within the jurisdictional range of the District Court, as laid down in section 20, Ordinance No. 3 of 1946.

The powers of section 55 of the Excise Enactment do not however oust the jurisdiction of a Magistrate's Court where offences under the Enactment fall within it. This jurisdiction is defined in section 26 of Ordinance 3 of 1946 as amended by section 4 of Ordinance 14 of 1946, and the power of punishment is laid down for Magistrate's Courts in section 27 of Ordinance 3 of 1946.

Shortly it may be said that section 55 of the Excise Enactment increases the power of punishment for a District Court when trying cases under the Enactment, but does not affect the power of punishment of a Magistrate's Court when doing the same.

In this case the offence charged fell within the jurisdictional limits of a Magistrate's Court, and was rightly tried by such a Court. The punishment inflicted was one well within the powers granted to such Court.

I therefore hold that the conviction was correct and the sentence a lawful one and dismiss the appeal as far as the question of conviction is concerned, but in view of the circumstances disclosed by this case the sentence, I think, is excessive. The accused, it is clear, committed a technical offence and at no time was seeking to store intoxicating liquor in unlicensed premises. As soon as he had got a suitable premises he applied for approval to the Board. I can see no grounds for thinking that because the business is a big one the offence is made more heinous, and no other reason has been adduced by the prosecution. A token fine would, I think, meet the case.

The conviction is maintained and the appeal in regard to that is dismissed. The sentence is altered to one of a fine of $25/- or 14 days R.I. The balance of the fine of $75/- which has been paid is to be refunded.

*Conviction Upheld — Sentence Varied.*

---

## LEE KIEW & 17 ORS. v. PUBLIC PROSECUTOR.

[App. Cr. Juris. (Pretheroe, Ag. C.J.) March 18, 1948]
[K.L. — Mag. Cr. App. No. 7 of 1948]

*Penal Code, s. 447 — Essential element in the offence of criminal trespass — Plea of guilty — What constitutes.*

One essential element in the offence of criminal trespass is remaining on property "with intent thereby to intimidate, insult or annoy" the person in possession of the property. A plea of guilty cannot be accepted when this "intent" is not admitted by the accused.

MAGISTRATE'S CRIMINAL APPEAL.

*Benjamin* for the Appellants.

*W. Buhagiar* for the Respondent.

**Pretheroe, Ag. C. J.** : — When the appellants appeared before the lower Court, and were required to enter their pleas, none of them either pleaded guilty or claimed trial. Instead each made a statement on the same lines, and the following may be taken as typical of those statements :—

> "Wanted to move but no money to go: planted sweet potatoes and tapioca".

The learned Magistrate accepted this as a plea of guilty. Now, whatever might have been the effect of those words in a suit, they certainly do not amount to a plea of guilty under section 447 of the Penal

Code. One essential element in that offence is remaining on property "*with intent* thereby to intimidate, insult or annoy" the person in possession of the property. This intent was not admitted by the appellants. The person in possession of the property stated in his information for a summons that he was in fact annoyed, but this of itself does not prove the intent to annoy, and in any case, was not in evidence against the appellants.

As the appellants had not pleaded guilty and were not tried, I allowed the appeals, quashed all the convictions and ordered the fines to be refunded.

*Appeal Allowed.*

---

## WONG YIN & 2 OTHERS v. WONG MOOK.

[Ct. of App. (Pretheroe, Ag. C.J., M.U.; Murray-Aynsley, C.J., Singapore; and Evans, J.) March 15, 1948]
[M.U. — Civil Appeal No. 20 of 1947]

*Labour Code, S. 53 (iii) and (iv) — Breach of Contract — When leave to appeal can be granted — Question of law and of fact — Definition of a strike — Contract Enactment, S. 39.*

In this case the appellants applied for leave to appeal from a judgment of the learned Chief Justice setting aside a judgment of the Deputy Commissioner of Labour, Selangor in favour of the applicants.

**Held**, (1) that to obtain leave to appeal when the amount involved is below the statutory amount would-be appellants must show that a serious and important issue of law is involved; (2) Rights of appeal are purely creatures of statute and the Court cannot entertain any which cannot be brought strictly within the statutory limits.

COURT OF APPEAL.

*J. Eber and G. W. de Silva* for the Appellants.

*F. G. Charlesworth* for the Respondent.

**Pretheroe, Ag. C. J.** : — In this application for leave to appeal I have perused the draft judgments of Murray-Aynsley C.J., Singapore, and Evans J., and find myself in agreement with the reasons set out by them. It is only necessary for me to add therefore that I also agree that the application must be refused.

**Murray-Aynsley, C. J.** : — In this case the appellants applied for leave to appeal.

They needed leave for two reasons. Firstly they were out of time; secondly the amount involved was below the sum of $500. In order to get leave to appeal out of time would-be appellants must show adequate grounds. Here they did not show any at all.

To obtain leave to appeal when the amount involved is below the statutory amount would-be appellants must show that a serious and important issue of law is involved. Leave should not be granted when there is a mere question of fact to be considered. It is better, on the balance, that some cases should be wrongly decided then that large sums should be wasted on litigation over trivial amounts. It is a question of the lesser of two evils.

In order to decide a question of law it is first of all necessary that the facts should have been clearly found. Here they are as obscure as could be imagined. All that is clear is that the appellants were at one time employed by the respondent. At some time their wages were reduced. Whether or not their contracts were properly terminated does not appear. By way of protest they ceased work for three days. The respondent refused to re-employ them. They went to the appropriate officer of the Labour Department and in the proceedings before him and in the subsequent appeal to the Chief Justice of the Malayan Union the matter seems to have been treated as though there was a subsisting contract at the time when the appellants went on strike.

The Deputy Commissioner seems to have decided that no strike could ever be a breach of contract. On appeal the Chief Justice of the Malayan Union naturally negatived that startling proposition and applied section 53 (iv) Labour Code which defines in what circumstances voluntary absence constituted a breach of contract by the labourer.

The appellants now desire to carry the matter further. It appears that now their new ground of appeal is that there was a prior breach of contract by the respondent which would entitle them to the amounts which they recovered from the Deputy Commissioner. This is purely a question of fact. In order to determine the matter it would be necessary to refer it back for findings of fact. I cannot see any likelihood of any question of law emerging. For these reasons I did not consider that the case was a suitable one for giving leave to appeal and the application was refused.

**Evans, J.** : — This was an application for leave to appeal from a judgment of the learned Chief Justice setting aside a judgment of the Deputy Commissioner of Labour, Selangor, in favour of the applicants for the payment to each of "wages in lieu of notice" for breach of their contracts of service.

The applicants were employed by the respondent as tappers, and on 11th July, 1947, went on strike for